

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 435 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJASTHAN PACKING COMPANY PVT.LTD.

Versus

HILTON SERVICES PVT.LTD.

Appearance:

MR DD VYAS with MR VARIAVA for Petitioner
MR RM VIN for Respondent No. 1
None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/02/2000

ORAL JUDGEMENT

1. This revision application under section 115 of C.P.C. is directed against the order below Ex.1 in Civil Misc. Application No. 711 of 1994. Under this order, the M.C.A. filed by the petitioner for setting aside the

ex-parte decree dated 15th April, 1988 passed in Summary Suit NO. 290 of 1988 came to be rejected. The decree has been passed on 15th April, 1988 and application for setting aside of the same has been filed by the petitioner in October, 1994. It is the case of the petitioner that they came to know about this ex-parte decree only on 25th July, 1995 when the plaintiff respondent sought to execute it. this application came to be rejected only on the ground of limitation. It is not in dispute that the application has been filed by the petitioner under Order 37 Rule, 4 of C.P.C. Learned trial court has also accepted that Article 137 of the Limitation Act, 1963 shall be applicable to the present case but what it is held that the period of limitation of three years is to be taken from the date of decree and not from the date of knowledge of the decree. Applying this provision, as the application has been filed beyond three years of the date of decree, the same has been rejected. Hence, this revision application. The merits of the application has not been touched by the trial court what to say to give any finding thereon.

2. Learned counsel for the petitioner contended that the learned court below has rightly applied the Article of Limitation ACT to these proceedings but has committed a material irregularity in exercise of its jurisdiction in holding that this limitation will start from the date of the decree. It has next been contended that Order 9 Rule 13, C.P.C. is not applicable to this case. For setting aside of the decree passed by the City Civil Court in a suit under Order 37 of C.P.C. only relevant provision is Rule 4 of Order 37. In support of his contention Shri Vyas learned counsel for the petitioner placed reliance on the decision of the Bombay High Court in the case of P.N. Films Ltd. vs. Overseas Films Corpn. Ltd. reported in AIR 1958 Bombay 10, the decision of the Jammu & Kashmir High Court in the case of Subash Raina vs. Suraj Prakash reported in AIR 1977 J & K 80 and of this court in the case of MSM Universal Tyre and Rubber Co. Ltd. vs. M/s. Modi Ramanlal Manharlal reported in 9 GLT 134.

3. Shri R.M. Vin, learned counsel for the plaintiff - respondent supported the order of the learned trial court.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. Learned trial court has not decided the application filed by the defendant - petitioner under

Order 37 Rule 4 of C.P.C. for setting aside of the ex-parte decree on merits. This application has been dismissed on the ground of limitation. Learned counsel for the petitioner though has made submissions on the merits of the matter also but these submissions I have not recorded for the reason that in case his contention on the question of limitation is accepted then the matter has to be remanded back. The matter is squarely covered by the decision of the Bombay High Court in the case of P.N.Films Ltd. vs. Overseas Films Corpn. Ltd. (supra). This decision being the decision of Division Bench is binding on this court as it is prior to year 1961. So it is no more res integra that in the application filed by the defendant - petitioner for setting aside of the ex-parte decree in a suit filed under Order 37, the Article which is applicable is 137 of Limitation Act, 1963 and not the Article 123 of the said Act. Learned executing court has also not disputed this legal aspect. It is also held that the proper Article of the Limitation Act to this case is 137 and not 123 but the application has been rejected only ground that the limitation of three years has to be counted from the date of decree. Article 137, reads as under:

137. Any other application Three years When the
for which no period of right to
limitation is provided apply
elsewhere in this accrues.
division.

6. Time from which the period begins to run in this case is when right to apply accrues. So the question which falls for the consideration of the court is when the right to apply will accrue to the petitioner in this case. The case of the petitioner is that the decree has been passed ex-parte. When decree has been passed ex-parte how it is to be taken that time from which the period begins to run is to be taken from the date of decree. If that is accepted then it will become very easy for unscrupulous litigants to take ex-parte decree and not to put the same for execution for three years. Limitation of execution of decree is of 12 years. So the decrees which have been got ex-parte will be immuned from challenge as limitation will be managed to be expired by the decree holder. Such an interpretation cannot be given to the provisions of Article 137 of the Limitation Act, 1963. The provision has to be interpreted and given effect to in the way which advance substantial justice to the parties and not in the way where unscrupulous litigants are to be benefitted. Learned trial court has committed a serious illegality in exercise of its jurisdiction in holding that the time shall be taken to

have started for limitation purpose from the date of the decree. Right to apply for setting aside of the ex-parte decree will accrue only when the party came to know about the decree and this is only a reasonable and plausible interpretation of this article of the Limitation Act otherwise it will become easy for the decree holders to provide total immunity to the ex-parte decree under the order under Order 37 Rule 4 C.P.C. In such case, the provisions of Order 37 will become redundant for all the purposes. It is not the intention of the legislation.

7. In the result, this revision application succeeds and the same is allowed and the order dated 20-3-1997 below Ex. 1 in Civil Misc. Application No. 711 of 1994 in Summary Suit No. 290 of 1988 is quashed and set aside. Learned trial court is directed to decide the application filed by the petitioner under Order 37 Rule 4 C.P.C. on merits. Rule is made absolute accordingly.

zgs/-